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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,934	11/25/2003	Rita Bitzer	10537/171A	9401
26646 7590 12/15/2008 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			EXAMINER GREEN, ANTHONY J	
			ART UNIT 1793	PAPER NUMBER
			MAIL DATE 12/15/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RITA BITZER
and
HALF PASSOTH

Application No. 10/723,934
Technology Center 1700

Mailed: December 15, 2008

Before PAMELA S. BENNETT, *Review Team Paralegal*
BENNETT, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on October 16, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

EXAMINER'S ANSWER, MISSING CERTIFIED TRANSLATION

The Examiner relied on the foreign reference DE 43 14 432 A1 (Rutgers) in rejecting the claims. A full certified English translation of the above-noted foreign reference is not of record in the Image File Wrapper (IFW).

When an Examiner relies on a document “in a language other than English, a translation *must* be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection” (emphasis added). See the *Manual of Patent Examining Procedure* (MPEP) § 1207.02 (Eighth Edition, Rev. 6, September 2007). Pursuant to a memorandum dated April 29, 2002 by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy:

Effective immediately, no appeal should be forwarded to the Board of Patent Appeals and Interferences for decision where: (1) a rejection is supported in whole or part by an abstract without reference to the underlying document, . . . ; or (2) a rejection is supported in whole or part by a prior art document not in the English language, unless accompanied by a translation of the prior art document into English.

The memorandum also states “[i]f the document is in a language other than English and the examiner seeks to rely on that document, a translation *must* be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection” (emphasis added).

CONCLUSION

Accordingly, it is **ORDERED** that the application is returned to the Examiner:

- 1) to obtain a full certified English language translation of DE 43 14 432 A1;
- 2) to complete the IFW by having the translation obtained scanned into the IFW;
- 3) to provide a copy of the translation obtained to Appellants; and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

PSB

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